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April 2009 Franchise Tax Board Public Litigation Roster

All currently active cases and those recently closed are listed on the roster. Activity or changes with respect to a case appear in bold-face type. Any new cases will appear in bold-face type.

A list of new cases that have been added to the roster for the month is also provided, as well as a list of cases that have been closed and will be dropped from the next report.

The Franchise Tax Board posts the Litigation Roster on its Internet site. The Litigation Roster can be found at: <http://www.ftb.ca.gov/law/litrstr/index.shtml>.

The Litigation Rosters for the last four years may be found on the Internet site.

FRANCHISE AND INCOME TAX
Closed Cases – APRIL 2009

<u>Case Name</u>	<u>Court Number</u>
Delucchi, Mario & Kathleen, et al	Sacramento Superior Court Case No. 06AS02661
Kanchanapoom, Visut & Meechai	Los Angeles Superior Court Case No. NC050569
Nissan North America, Inc.	Los Angeles Superior Court Case No. BC373781
Toys "R" Us	Sacramento Superior Court Case No. 01AS04316

FRANCHISE AND INCOME TAX
New Cases – APRIL 2009

<u>Case Name</u>	<u>Court Number</u>
Kiewit Corporation	San Francisco Superior Court No. CGC 09487540
Quellos Financial Advisors, LLC	San Francisco Superior Court No. CGC 09487540
Twenty-Nine Palms Band of Mission Indians	U.S. District Court, Eastern Division, Riverside Courthouse Case No. EDCV 08-1753-VAP (OPx)

FRANCHISE AND INCOME TAX
MONTHLY PUBLIC LITIGATION ROSTER

April 2009

ABBOTT LABORATORIES & Affiliates v. Franchise Tax Board

Los Angeles Superior Court Case No. BC369808

Filed – 04/20/07

Court of Appeal, 2nd Appellate District Case No. B204210

Taxpayer's Counsel

J. Pat Powers
Baker & McKenzie, LLP

FTB's Counsel

Brian Wesley

Scott L Brandman (NY)
Baker & McKenzie, LLP

Issue: Whether Plaintiffs were entitled to a deduction under section 24402 after the statute was found to be unconstitutional.

Years: 1999 and 2000 Amount \$2,340,093.00 Tax

Status: Request for Publication of Opinion filed by Defendant/Respondent on April 7, 2009. Unpublished Opinion vacated by Court of Appeal on April 20, 2009.

APPLE, INC. v. Franchise Tax Board

San Francisco Superior Court Case No. CGC08471129

Filed – 01/16/08

Taxpayer's Counsel

Jeffrey M. Vesely
Pillsbury, Winthrop, Shaw, Pittman, LLP

FTB's Counsel

Kristian Whitten

Issues: 1. Whether the Franchise Tax Board properly determined the order in which dividends are paid from earnings and profits.
2. Whether the Franchise Tax Board improperly allocated and disallowed interest.

Year: 09/30/89 Amount \$231,038.00 Tax

Status: Tentative Decision filed on May 19, 2009, with direction that Plaintiff file a Proposed Statement of Decision.

BAKERSFIELD MALL, LLC v. Franchise Tax Board

San Francisco Superior Court Case No. CGC07462728

Filed – 04/25/07

Taxpayer's Counsel

Amy L. Silverstein, Edwin Antolin
Silverstein & Pomerantz, LLP

FTB's Counsel

Marguerite Stricklin

Issues: 1. Whether the LLC fee imposed on an LLC doing business entirely within California by Rev. Tax. Code §17942 is unconstitutional under the due process, equal protection and commerce clauses of the U.S. Constitution.
2. Whether Rev. Tax. Code §17942 violates Article XIII, section 26 of the California Constitution.
3. Whether Rev. Tax. Code §17942 constitutes an invalid exercise of the states police power and is void.

Years: 2000 through 2004 Amount \$56,537.00 Tax

Status: Case Management Conference held on May 22, 2009, regarding Plaintiff's Motion for Leave to Amend Complaint.

BANISTER, JOSEPH R. v. Franchise Tax Board

Sacramento Superior Court Case No. 06CS00930 (Petition Writ of Mandate)

Sacramento Superior Court Case No. 07AS04091 (Claim for Refund)

Taxpayer's Counsel

Joseph R. Banister (Pro Per)

Filed - 07/10/06

Transferred - 09/14/07

FTB's Counsel

Amy Winn

Issues: 1. Whether plaintiff has a California filing obligation.
2. Whether penalties were properly assessed against plaintiff.

Year: 2002

Amount \$895.00 Tax
\$537.50 Penalty

Status: Judgment in favor of Defendant filed on April 8, 2009.**BANKS, KENNETH v. Franchise Tax Board**

San Francisco Superior Court Case No. CGC09484981

Taxpayer's Counsel

Stephen Moskowitz, Esq.

Law Offices of Stephen Moskowitz, LLP

Filed - 02/13/09

FTB's Counsel

Lucy Wang

Issue: Whether Plaintiff was a Resident of California during 1995.Year: 1995Amount \$276,096.00 TaxStatus: Answer to Complaint filed on April 24, 2009.**BAYER CORPORATION v. Franchise Tax Board**

Sacramento Superior Court Case No. 07AS03350

Taxpayer's Counsel

Eric J. Coffill, Carley A. Roberts

Morrison & Foerster, LLP

Filed - 07/23/07

FTB's Counsel

Steven J. Green

Issue: Whether the value of Plaintiff's inventory was properly calculated for each of the years for purposes of determining its cost of goods sold.Years: 1993 and 1994Amount \$2,481,551.00 TaxStatus: Notice of Entry of Order filed on February 17, 2009.**CALIFORNIA TAXPAYERS' ASSOCIATION v. Franchise Tax Board**

Sacramento Superior Court Case No. 34-2009-80000138

Taxpayer's Counsel

Amy L. Silverstein, Edwin P. Antolin

Silverstein & Pomerantz, LLP

Filed - 02/17/09

FTB's Counsel

Jill T. Bowers

Issues: 1. Whether RTC section 19138 creates a new penalty for the underpayment of taxes owed or creates a new tax.
2. Whether RTC section 19138 required a two-thirds vote of both the Assembly and Senate to be properly enacted under Article XIII A, § 3 of the California Constitution.

3. Whether RTC section 19138 was enacted in accordance with Article IV, § 8(b) of the California Constitution.
4. Whether RTC section 19138 violates the Eight and Fourteenth Amendments to the Constitution of the United States of America.
5. Whether RTC section 19138 violates the Commerce Clause of the Constitution of the United States of America by improperly discriminating against corporations engaged in a unitary business.
6. Whether Plaintiff is entitled to the issuance of a writ of mandate commanding FTB to not enforce RTC section 19138.

Year: 2003 Amount \$0.00

Status: Respondent's Notice of Demurrer and Demurrer to Petition for Writ of Mandate and Verified Complaint for Injunctive Relief and Declaratory Judgment filed on April 2, 2009. Petitioner's Request for Judicial Notice in Support of Verified Petition for Writ of Mandate and Opposition to Demurrer by Respondent, filed on April 13, 2009. Hearing on the Merits of the Petition was held on May 8, 2009, and, by Order issued April 20, 2009, denied in its entirety.

CITY NATIONAL CORPORATION v. Franchise Tax Board

Los Angeles Superior Court Case No. BC334772
Court of Appeal, 2nd Appellate District Case No. B189240
California Supreme Court Case No. S150563

Filed – 06/10/05

Taxpayer's Counsel

Kenneth R. Chiate, Mary S. Thomas
Quinn, Emanuel, Urquhart, Oliver & Hedges, LLP

FTB's Counsel

Brian Wesley

Sherrill Johnson, Offices of the General Counsel - City National Bank

Issues: 1. Whether Plaintiff improperly engaged in tax shelter transaction involving Regulated Investment Trusts (REITs) and Regulated Investment Companies (RICs) during the subject years.
2. Whether certain subsidiaries were exempt from California taxation as IRC 501(c)(15) entities.
3. Whether Plaintiff has satisfied the requirement of exhausting all administrative remedies in order to maintain a lawsuit.

Years: 1999 through 2003 Amount \$84,676,129.00 Tax

Status: Case Management Conference scheduled for March 5, 2009, continued to June 11, 2009,

CITY NATIONAL CORPORATION & Subs. v. Franchise Tax Board

Sacramento Superior Court Case No. 06AS02275

Filed – 06/06/06

Taxpayer's Counsel

Kenneth R. Chiate
Quinn, Emanuel, Urquhart Oliver & Hedges, LLP

FTB's Counsel

Molly K. Mosley

Sherrill Johnson
Offices of the General Counsel
City National Bank

Issue: Whether Plaintiffs improperly engaged in tax shelter transaction involving Real Estate Investment Trusts (REITs).

Year: 2004 Amount \$23,900,000.00 Tax

Status: Defendant's Notice of Entry of Order to Stay Action Pending Certain Developments in Related Los Angeles action filed on April 3, 2008.

DICON FIBEROPTICS, INC. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC367885

Filed – 03/13/07

Court of Appeal, 2nd Appellate District Case No. B202997*Taxpayer's Counsel*Thomas R. Freeman, Paul S. Chan,
Bird, Marella, Boxer, Wolpert,
Nessim, Drooks & Lincenberg, P.C.*FTB's Counsel*

Mark Richelson

Marty Dakessian

Mardiros, Hagop, Dakessian

Issues: 1. Whether Franchise Tax Board properly denied EZ Credits claimed by Plaintiff.
2. Whether Franchise Tax Board has authority to look behind vouchers issued by Local Enterprise Zone coordinator.

Year: Ending 03/31/07 Amount \$1,104,992.00 Tax

Status: Published Opinion filed on May 7, 2009; Judgment is reversed. Trial Court is directed to vacate its Order Sustaining the Demurrer of the Franchise Tax Board and enter a new Order Overruling the Demurrer. Petition for Rehearing filed by Defendant/Respondent on May 22, 2009.

DU, BENJAMIN R. AND CARMELA v. Franchise Tax Board

Los Angeles Superior Court Case No. BC391413

Filed – 05/23/08

Court of Appeal, 2nd Appellate District Case No. B213971 (consolidated with Mickelsen & Shimmon)*Taxpayer's Counsel*Charles P. Rettig, Steven Toscher
Sharyn M. Fisk & Michael R. Stein
Hochman, Salkin, Rettig, Toscher & Perez, P.C.*FTB's Counsel*

Mark Richelson

Issue: Whether plaintiffs are entitled to interest suspension under Revenue and Taxation Code section 19116.

Year: 1999 Amount \$288,938.00 Interest

Status: Plaintiffs' Notice of Appeal filed on February 5, 2009.

ELS EDUCATIONAL SERVICES, INC. v. Franchise Tax Board

Sacramento Superior Court Case No. 07AS0307

Filed – 07/05/07

*Taxpayer's Counsel*Robert R. Rubin
McDonough, Holland & Allen, PC*FTB's Counsel*

Robert Asperger

Issue: Whether Plaintiff was entitled for California purposes, to elect out of treatment provided by section 338(h)(10) of the Internal Revenue Code.

Year: 08/28/97 Amount \$630,615.97 Tax

Status: Plaintiff's and Defendant's Joint Stipulation of Facts and Trial Briefs filed with the Court on April 21, 2009.

GARCIA, W. ROCKE AND GLENDA L. v. Franchise Tax Board

San Francisco Superior Court Case No. CGC06456659
Court of Appeal, 1st Appellate District. Case No. A122710

Filed – 10/02/06

Taxpayer's Counsel

William J. McLean
A Professional Law Corporation

FTB's Counsel

Kristian Whitten

- Issues:
1. Whether Plaintiffs timely acquired replacement real property in compliance with the Internal Revenue Code section 1033.
 2. Whether a decision by the State Board of Equalization precludes the assessment of penalties pursuant to section 19777.5.
 3. Whether the penalty assessed by Section 19777.5 satisfies due process requirements.

Year: 1992

Amount \$357,009.00 Tax
\$259,056.00 Penalty

Status: Defendant/Appellant's Reply Brief filed on April 1, 2009.

GENERAL MILLS, INC. & SUBSIDIARIES v. Franchise Tax Board

San Francisco Superior Court Case No. CGC05439929
Court of Appeal, 1st Appellate District Case No. A120492

Filed – 03/29/05

Taxpayer's Counsel

Thomas H. Steele
Andres Vallejo, Jeffrey S. Terraciano
Morrison & Foerster LLP

FTB's Counsel

Joyce Hee

Paul H. Frankel
Morrison & Foerster LLP

- Issues:
1. Whether the Plaintiffs' payroll factor was properly computed by excluding foreign employee stock options.
 2. Whether the Plaintiffs' sales factor was properly calculated by excluding receipts from commodities transactions and short-term financial instruments.
 3. Whether federal RAR adjustments were properly taken into account.

Years: 1992 through 1997

Amount \$3,950,026.00 Tax

Status: Published Opinion filed on April 15, 2009. Defendant/Respondent's Petition for Review filed on May 22, 2009.

GOLDEN WEST HEALTH PLAN, INC. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC353849
Court of Appeal, 2nd Appellate District Case No. B205246

Filed – 06/15/06

Taxpayer's Counsel

Alan R. Maler
Greenberg Traurig, LLP

FTB's Counsel

Marla Markman

Issue: Whether Plaintiff made a valid S Corporation election for California purposes.

Years: 04/01/03 through 06/01/03

Amount \$669,045.00 Tax

Status: Awaiting Court of Appeal's decision.

GOLDMAN, STEPHEN J. AND AZITA ETAATI v. Franchise Tax Board

Alameda County Superior Court Case No. RG09441003

Taxpayer's CounselAmy L. Silverstein, Edwin Antolin, Johanna W. Roberts
Silverstein & Pomerantz, LLP

Filed – 03/12/09

FTB's Counsel

David Lew

Issue: The issue is whether a self-reporting taxpayer participating in the Voluntary Compliance Initiative (VCI) is entitled to interest suspension under Revenue and Taxation Code section 19116.

Year: 2000 Amount \$823,950.00 Interest

Status: Defendant's Answer to Complaint filed on April 27, 2009.

GONZALES, THOMAS J. II v. Franchise Tax Board

San Francisco Superior Court Case No. CGC06454297

Taxpayer's CounselMartin A. Schainbaum, Esq.
Martin A. Schainbaum, PLC

Filed – 07/18/06

FTB's Counsel

Jeffrey Rich

Issues: 1. Whether a \$142,000,000.00 capital loss from an abusive tax shelter is allowable.
2. Whether a taxpayer self-reporting under VCI is eligible for interest suspension pursuant to section 19116.
3. Whether the taxpayer is entitled to deduct legal expenses paid in connection with an investment.

Years: 2000 and 2001 Amount \$12,374,510.00 Tax

Status: Case Management Conference scheduled for March 12, 2009, continued to June 11, 2009.

GRIBBLE, STANLEY W. & SWG MANAGEMENT COMPANY v. Franchise Tax Board

Los Angeles Superior Court Case No. BC393360

Taxpayer's CounselJames G. Damon, M. Edward Mishow, Esq.
Voss, Cook & Thel, LLP

Filed – 06/26/08

FTB's CounselChristine Zarifian
Stephen Lew

Issues: 1. Whether stock basis can be increased when cancellation of indebtedness income is not recognized because of the insolvency exception of IRC §108(a)(1)(B).
2. Whether various transactions between the Plaintiffs and third parties lacked economic substance.
3. Whether the penalty under Revenue and Taxation Code section 19777.5 was properly assessed.

Year: 1994 (Gribble) Amount \$671,102.00 Tax
\$178,015.05 Penalty

Year 1994 (SWG) Amount \$51,179.11 Tax

Status: Case Management Conference held on January 13, 2009.

HANGER, DWIGHT T. & VICKI J. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC382988

Taxpayer's Counsel

Gordon B. Cutler, Esq.

Filed – 12/28/07

FTB's Counsel

Anthony Sgherzi

Issue: Whether taxpayers constructively received the proceeds from the exchange of LLC memberships for stock in the taxable year.

Year: 2000 Amount \$324,908.00 Tax

Status: Final Status Conference scheduled for January 30, 2009, off calendar.

HYATT, GILBERT P. v. Franchise Tax Board

Clark County Nevada District Court Case No. A382999

Filed - 01/06/98

Nevada Supreme Court Case No. 47141

Nevada Supreme Court Case No. 53264

Taxpayer's Counsel

Thomas L. Steffen & Mark A. Hutchison
Hutchison & Steffen, H. Bartow Farr III

FTB's Counsel

James W. Bradshaw
McDonald, Carano,
Wilson LLP
Las Vegas, Nevada

Issues: 1. Whether Plaintiff was a resident of California from September 26, 1991 through April 2, 1992.
2. Whether the Franchise Tax Board committed various torts with respect to plaintiff and is subject to a claim for damages.
3. Whether the Nevada courts have or should exercise jurisdiction over the Franchise Tax Board.

Years: 1991 and 1992 Amount \$7,545,492.00 Tax
\$5,659,119.00 Penalty

Status: Clark County Nevada District Court
Motion regarding Rule 60 denied on April 8, 2009. Order Granting Motion for Stay Without Bond filed on April 8, 2009.

JENSEN, CRAIG C. & SALLY v. Franchise Tax Board

Los Angeles Superior Court Case No. 08K09860

Filed - 04/18/08

Court of Appeal, 2nd Appellate District Case No. B211815

Taxpayer's Counsel

Jonathan Bailey Lappen
Lappen and Lappen

FTB's Counsel

Anthony Sgherzi

Issue: Whether Revenue and Taxation Code section 17043, which imposes an additional tax of one percent on taxable income in excess of \$1 million in taxable years beginning on or after January 1, 2005, violates the equal protection clause of the U.S. Constitution.

Year: 2006 Amount \$19,283.00 Tax

Status: Defendant/Respondent's Opening Brief filed on April 29, 2009.

KIEWIT CORPORATION v. Franchise Tax Board

San Diego Superior Court Case No.37-2009-00087282-CU-MC-CTL

Filed - 04/09/09

Taxpayer's Counsel

Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts
Silverstein & Pomerantz, LLP

FTB's Counsel

Brian Wesley

- Issues:**
1. Whether Plaintiff is entitled to a refund of taxes due to RTC section 24410 having been declared unconstitutional.
 2. Whether Plaintiff properly included gross receipts from securities as part of the sales factor in calculating its tax liability to California.
 3. Whether Plaintiff is entitled to a refund of taxes due to a claimed entitlement to Enterprise Zone hiring credits.
 4. Whether Plaintiff is entitled to a refund of taxes due to RTC section 24402 having been declared unconstitutional.
 5. Whether Plaintiff's sale of an interest in a partnership may properly be considered non-business income.

Years: 1996 through 2001 **Amount** \$3,779,530.00 Tax

Status: Plaintiff's Summons and Complaint served on April 10, 2009.

MANNING, LAWRENCE T. & JOY v. Franchise Tax Board

Los Angeles Superior Court Case No. BC382987

Taxpayer's Counsel

Gordon B. Cutler, Esq.

Filed – 12/28/07

FTB's Counsel

Anthony Sgherzi

Issue: Whether taxpayers constructively received the proceeds from the exchange of LLC memberships for stock in the taxable year.

Year: 2000 **Amount** \$167,710.00 Tax

Status: Final Status Conference scheduled for January 30, 2009, continued to August 11, 2009.

MICKELSEN, PAUL L. & PATRICIA A. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC385197

Court of Appeal, 2nd Appellate District Case No. B213971 (consolidated with Du et al. & Shimon)

Taxpayer's Counsel

Charles P. Rettig, Esq.

Steven Toscher, Sharyn M. Fisk

Hochman, Salkin, Retigg, Toscher & Perez, P.C.

Filed – 02/08/08

FTB's Counsel

Mark P. Richelson

Issue: Whether a taxpayer self-reporting under VCI is eligible for interest suspension pursuant to section 19116.

Year: 1999 **Amount** \$537,178.00 Interest

Status: Plaintiffs' Notice of Appeal filed on February 5, 2009.

MICROSOFT CORPORATION v. Franchise Tax Board

San Francisco Superior Court Case No. CGC08471260

Taxpayer's Counsel

James P. Kleier, Brian W. Toman

Reed Smith, LLP

Filed – 01/22/08

FTB's Counsel

David Lew

Lucy Wang

Issues:

1. Whether royalty income received from licensing agreements with Original Equipment Manufacturers should be sourced outside of California based upon costs of performance.

2. Whether receipts from trading marketable securities should be included in the sales factor.
3. Whether the value of trademarks, copyrights, patents and other intangible assets should be included in the property factor.
4. Whether the taxpayer should be allowed a deduction under Revenue and Taxation Code section 24402 for dividends received for the years at issue.
5. Whether the amnesty penalty under Rev. & Tax. Code § 19777.5 violates the due process clause of the U.S. Constitution, applies only retroactively, or attaches only after a liability becomes due and payable.

Years: 1995 and 1996 Amount \$25,283,868.00 Tax

Status: **Order; Stipulation Regarding Motion for Summary Judgment or Summary Adjudication and Order, filed on April 29, 2009. Plaintiff's Notice of Entry of Order and Notice of Ruling, filed on April 30, 2009.**

MIKE, ANGELINA v. Franchise Tax Board

San Diego Superior Court Case No. 37-2007-00067324-CU-MC-CTL

Filed – 05/25/07

Appellate Court, 4th Appellate District Court No. D054439

Taxpayer's Counsel

FTB's Counsel

Richard M. Freeman, Carole M Ross

Leslie Branman Smith

Sheppard, Mullin, Richter & Hampton, LLP

Issue: Whether plaintiff's distribution of gaming income derived from revenue generated on a Native American reservation is exempted from California tax because plaintiff resided on the reservation of another tribe.

Year: 2000 Amount \$31,856.00 Tax

Status: Plaintiff's Notice of Appeal filed on January 20, 2009.

MONTGOMERY, Parker G. v. Franchise Tax Board

San Francisco Superior Court Case No. CGC09484121

Filed – 01/15/09

Taxpayer's Counsel

FTB's Counsel

David E. Harris

Karen Yiu

Miller, Starr, Regalia

A Professional Law Corporation

Issue: Whether Franchise Tax Board properly denied Plaintiff's claimed worthless stock deduction.

Year: 1999 Amount \$332,692.00 Tax
\$126,530.46 Penalty

Status: Answer to Complaint filed on March 26, 2009.

NORTHWEST ENERGETIC SERVICES, LLC v. Franchise Tax Board

San Francisco Superior Court Case No. CGC05437721

Filed – 01/15/05

Court of Appeal 1st Appellate District Case No. A114805

Court of Appeal, 1st Appellate District Case No. A115841 (Attorneys' Fees)

Court of Appeal, 1st Appellate District Case No. A115950 (Attorneys' Fees)

California Supreme Court Case No. S162627

Taxpayer's Counsel

FTB's Counsel

Amy L. Silverstein, Edwin Antolin

Marguerite C. Stricklin

Silverstein & Pomerantz

Issue: Whether Revenue and Taxation Code section 17942, which imposes a tax upon the "total income from all sources reportable to this state" of LLC registered with the Secretary of State, violates the Due Process Clause and Commerce Clauses.

Years: 12/31/97 through 12/31/01

Amount \$25,067.00 Fees
\$ 3,764.29 Penalty

Status: Case Management Conference held on January 23, 2009.

QUELLOS FINANCIAL ADVISORS, LLC v. Franchise Tax Board
San Francisco Superior Court Case No. CGC09487540
Taxpayer's Counsel
Amanda J. Pedvin
Septoe & Johnson, LLP

Filed – 04/20/09
FTB's Counsel
Anne Michelle Burr

Issues:

1. Whether the promoter penalty provided for in RTC section 19177 violates the due process clause of the United States and California Constitutions.
2. Whether the promoter penalty provided for in RTC section 19177 violates the commerce clause contained within the United States Constitution
3. Whether the penalty provisions provided for in RTC section 19177 apply to activities prior to calendar year 2005.
4. Whether the proper measure of the promoter penalty is \$1,000 per transaction or 50% of the gross income derived from the improper activity.
5. Whether the proper measure of the promoter penalty may include income not received by the person/entity against whom the penalty has been assessed.

Years: N/A

Refund sought \$3,473,437.50 Penalty

Status: Complaint for Refund of Tax Penalty Pursuant to Section 19180 of the California Revenue and Taxation Code served on April 23, 2009.

REILING, BERNARD & JUDITH ET AL, v. Franchise Tax Board
Los Angeles Superior Court Case No. BC378978
Taxpayer's Counsel
James D. Gustafson, Stephen R. Goostrey
Gustafson & Goostrey, LLP

Filed – 10/12/07
FTB's Counsel
Donald R. Currier
Elisa Wolfe-Donato

Issue: Whether Plaintiffs are entitled to deductions, depreciation, and deferral of gains by virtue of acquiring participation units in a trust that does not hold title to the underlying property.

Years: 1998 through 2002

Amount \$709,482.00 Tax

Status: Order regarding Continuance of Trial Date and Associated Dates filed on April 24, 2009.

RIVER GARDEN RETIREMENT HOME v. Franchise Tax Board
San Francisco Superior Court Case No. CGC07467783
Court of Appeal, 1st Appellate District. No. A123316
Taxpayer's Counsel
Amy L. Silverstein, Edwin Antolin
Silverstein & Pomerantz, LLP

Filed – 10/02/07
FTB's Counsel
David Lew

Issues: 1. Whether Plaintiff is entitled to a dividend received deduction under Revenue and Taxation Code section 24402 for the years in issue.
2. Whether the penalty imposed by Revenue and Taxation Code section 19777.5 was properly assessed.

Years: 1999 and 2000
Amount \$5,375.26 Tax
\$ 895.93 Penalty

Status: Plaintiff/Appellant's Opening Brief filed on April 30, 2009.

ROHR, INC. v. Franchise Tax Board

San Diego Superior Court Case No. 37-2007-00070925-CU-CO-CTL
Court of Appeal, 4th Appellate District Division 1 Case No. D052309
California Supreme Court Case No. S161612

Filed – 09/07/07

Taxpayer's Counsel

Mark L. Mann

Luce, Forward, Hamilton & Scripps LLP

FTB's Counsel

Brian D. Wesley

Issues: 1. Whether Rohr, Inc. was engaged in a unitary business with Rohr Credit Corporation, its subsidiary.
2. Whether losses incurred by Rohr Credit Corporation constituted nonbusiness income.
3. Whether plaintiff is entitled to attorneys' fees.
4. Whether a suit for refund can be maintained where not all the interest due has been paid.

Years: 07/31/85 through 07/31/87
Amount \$5,155,415.00 Tax

Status: Plaintiff's Motion for Summary Judgment granted on April 1, 2009.

SHAW, BRIAN K. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC378829

Filed – 10/10/07

Taxpayer's Counsel

David Roth, Esq.

Hochman, Salkin, Rettig, Toscher & Perez

FTB's Counsel

Diane Spencer-Shaw

Issues: 1. Whether Plaintiff was a resident of California for tax purposes.
2. Whether assessing a penalty under Revenue and Taxation Code section 19777.5 violates Due Process.

Years: 1990 through 1994
Amount \$487,084.00 Tax
\$ 89,534.00 Penalty

Status: Post-Mediation Status Conference held on March 12, 2009.

SHIMMON, EDWARD & ANNELIESE v. Franchise Tax Board

Los Angeles Superior Court Case No. BC363822

Filed – 12/22/06

Court of Appeal, 2nd Appellate District Case No.B213971 (consolidated with Du et al. & Mickelsen)

Taxpayer's Counsel

Charles P. Rettig, Sharyn M. Fisk

Hochman, Salkin, Rettig, Toscher & Perez, P.C.

FTB's Counsel

Lisa W. Chao

Issue: Whether a taxpayer filing under the first option of VCI was eligible for the interest suspension provided by section 19116.

Year: 1999 Amount \$515,422.00 Interest

Status: Plaintiff's Notice of Appeal filed on February 5, 2009.

THODE, JEROME P. & KATHLEEN A. THODE-FERRIS v. Franchise Tax Board

Los Angeles Superior Court Case No. BC383969

Taxpayer's Counsel

Gordon B. Cutler, Esq.

Filed – 01/17/08

FTB's Counsel

Anthony Sgherzi

Issue: Whether taxpayers constructively received the proceeds from the exchange of LLC memberships for stock in the taxable year.

Year: 2000 Amount \$137,694.00 Tax

Status: Status Conference held on December 29, 2008.

TWENTY-NINE PALMS BAND OF MISSION INDIANS v. Arnold Schwarzenegger & Selvi Stanislaus

U.S. District Court, Eastern Division-Riverside Court House, Case No. EDCV08-1753-VAP (OPx)

Taxpayer's Counsel

Richard M. Freeman, Matthew S. McConnell, Carole M. Ross
Sheppard, Mullin, Richter & Hampton, LLP

Filed – 03/30/09

FTB's Counsel

Timothy Nader

Issues:

1. Whether California's taxation of per-capita gambling distributions made by tribes to tribal members not living on the tribe's reservation violates:
 - A. The Indian Commerce Clause contained within the United States Constitution;
 - B. The Supremacy Clause of the United States Constitution;
 - C. The Indian Gaming Regulatory Act; or
 - D. The Tribal-State Gaming Compact between the tribe and the State of California.
2. Whether California taxation of wages earned by tribal members working at tribal casinos but not living on the tribe's reservation violates:
 - A. The Indian Commerce Clause contained within the United States Constitution;
 - B. The Supremacy Clause of the United States Constitution;
 - C. The Indian Gaming Regulatory Act; or
 - D. The Tribal-State Gaming Compact between the tribe and the State of California.
3. Whether the tribe constitutes a partnership-type organization such that monetary distributions to its members are exempt from taxation by the State of California.

Year: None Amount None

Status: Plaintiff's Amended Complaint for: (1) Breach of Tribal Compact, (2) Federal Preemption, and (3) Exemption under Federal and State Law, served on April 17, 2009.

VENTAS FINANCE I, LLC v. Franchise Tax Board

San Francisco Superior Court Case No. 05440001

Court of Appeal, 1st Appellate District Case No. A116277 & Case No. A117751

California Supreme Court Case No. S166870

U.S. Supreme Court Case No. 08-1022

Taxpayer's Counsel

Amy L. Silverstein, Edwin Antolin
Silverstein & Pomerantz, LLP

Filed – 04/01/05

FTB's Counsel

Marguerite Stricklin

Issue: Whether Revenue and Taxation Code section 17942, which imposes a tax based upon the "total income from all sources reportable to this state" of LLC registered with the Secretary of State, violates the Due Process Clause and Commerce Clause.

Years: 2001 through 2003 Amount \$29,580.00 Tax

Status: **Petition for Writ of Certiorari denied on April 6, 2009, by U.S. Supreme Court. Case is remanded to San Francisco County Superior Court.**

WESTLUND, Charles G. v. Franchise Tax Board
Los Angeles Superior Court Case No. BC406803
Taxpayer's Counsel
Robert F. Klueger, Esq.
Klueger & Stein, LLP

Filed - 01/30/09
FTB's Counsel
Mark P. Richelson

Issue: Whether FTB properly imposed additional tax and related assessments against Plaintiff for failing to report income received during tax years 1994, 1995 and 1996.

Years: 1994 through 1996 Amount \$96,632.00 Tax
\$116,622.67 Penalty

Status: **Answer to Complaint filed on April 2, 2009.**